

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2486 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R. TRIPATHI

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

A D TAMHANKAR

Versus

STATE OF GUJARAT

Appearance:

MR NK MAJMUDAR for Petitioner
RULE SERVED for Respondent No. 1
MR RJ OZA for Respondent No. 2

CORAM : MR.JUSTICE RAVI R. TRIPATHI

Date of decision: 09/03/2001

ORAL JUDGEMENT

The petitioner who was serving under the Chief Engineer and Director, Gujarat Engineering Research Institute, Vadodara has filed the present petition for

reliefs as under :

"15(a)

(b) Be pleased to direct the respondents to give the benefit of special pay to the petitioner with effect from 16.6.79, by issuing a suitable writ, direction and/ or order under Article 226 of the Constitution of India;

(c) Be pleased to quash and set aside the resolution dated 1.6.88, annex. J, in so far as it gives special pay only to some categories of employees, by issuing a suitable writ, direction and/ or order under Article 226 of the Constitution of India;

.. .. ."

The petitioner has stated that at the relevant time the petitioner was working as Senior Scientific Assistant and was also holding charge of the post of Assistant Research Officer (Geology) in Engineering Geology Division, Baroda. It is also the case of the petitioner that the post of Geologist (Senior), Geologist (Class II) and Junior Geologist were under Central Drilling Unit which was under the Irrigation Investigation Circle under the Irrigation department (PWD). In the year 1966 the entire Central Drilling Unit was transferred by way of en block transfer under the administrative control of respondent no.2. It is also the case of the petitioner that in the year 1961 the Government had decided to give special pay to various categories of employees under the Engineering Research Institute, Baroda. Accordingly, the Director, Engineering Research Institute, Baroda was given special pay of Rs.200/-; Deputy Director of the Institute was given Rs.120/-; and Assistant Research Officer was given Rs.80/- per month as special pay. The case of the petitioner is that the special pay is not paid to the petitioner as at the relevant time the petitioner was not under the Engineering Research Institute. Otherwise, he performs duties of arduous and responsible nature, which are performed by the officers to whom special pay is given. The petitioner bases his claim on the fact that Resolution dated 30.3.1979, by which the post of Assistant Research Officer (Geology) Class II was redesignated as Geologist in the General State Service Class II and that the petitioner was ordered to work on the redesignated post of Geologist Class II. It is also the case of the petitioner that by order dated 16.6.1979, the authorities had conveyed to the petitioner that he is

not entitled to draw special pay. A copy of the said letter is produced at annexure 'C' to the petition.

2. It is also the case of the petitioner that after Sarela Pay Commission, Desai Pay Commission was appointed, which had examined the cases of special pay and confirmed the criteria, which was laid down by the earlier Pay Commission. It is the case of the petitioner that in Desai Pay Commission it is observed that even if only one criteria is fulfilled which positively applies to the facts of the case, then also claim for special pay would be positively justified and as per the recommendations of Desai Pay Commission such special pay should be given. It is also stated that the recommendations of Desai Pay Commission were accepted by the Government in the year 1976 regarding special pay to all the categories of employees in Engineering Institute of Baroda, except the cadre of Geologists. According to the petitioner, it is this discrimination which has constrained the petitioner to approach this Court. The petitioner has also stated that on behalf of the Union of Gazetted Geologist Association, representations were made to the Government and one such representation was replied to by letter dated 22.7.1982, which is produced at Annexure 'H' to the petition. By that letter it was intimated to the association that correspondence should be directly made with the Building & Communication Department and that they may represent their case before 3rd Pay Commission. The petitioner has also pointed out in para 11 that earlier Special Civil Application No.2096 of 1983 was filed which came to be disposed of by this Court by an order dated 20.6.1983, whereby the petitioner was permitted to withdraw the same and to agitate the question before the Pay Commission. Not only that this Court said that,

"... I am not expressing any view
either on merits of the claim one way or the
other or in regard to the pleas raised by the
respondents. ..."

Not only that the Court had also said that,

"If the Commission holds that it has no
jurisdiction to decide or pronounce upon the
claim of the petitioner, this withdrawal made by
the petitioner will not preclude the petitioner
from approaching this Court. ..."

The Court was also pleased to observed that,

"It is not necessary for me to decide whether or not the decision of the Pay Commission which may be rendered hereafter is open to challenge before this Court, as such a question does not arise at this stage. . . ."

It is the case of the petitioner that thereafter, the Govt. passed a Resolution bearing No.ECR/ 1088/ 200/ H dated 1.6.1988 and that the Govt. has sanctioned special pay only to those posts for which sanction for special pay was in force as on 31.5.1987 and for other categories it was not given or continued. The petitioner contended that the decision of the respondent authorities of not giving special pay to the petitioner and other Geologists is highly unjust, arbitrary, violative of Articles 14 and 16 of the Constitution of India has challenged the action of the Govt. and has prayed for reliefs as set out hereinabove.

3. Learned advocate for the petitioner submitted that action of the authorities is also bad as only Geologists cadre is not given special pay and for no reasons this particular cadre of Geologists is deprived of the benefit of special pay. Learned advocate also submitted that until he was working as Assistant Research Officer, he was getting the special pay as recommended by 2nd Pay Commission, which was sanctioned by the Govt. But after the petitioner came to be redesignated as Geologist said benefit was withdrawn in respect of the petitioner. It was also submitted that the petitioner is performing the same duties as Geologist which he was performing as Assistant Research Officer even after his redesignation; therefore, the Govt. ought to have considered the same.

4. The discussion hereinabove suggests that the petition involves disputed questions of fact, namely what were the exact duties which were performed by the petitioner as Assistant Research Officer and what are the duties of the petitioner that are required to be performed after he came to be redesignated as Geologist, coupled with the fact that 3rd Pay Commission to whom this Court permitted the petitioner to approach and even subsequent Pay Commissions have not found the case of the petitioner acceptable for entitling him the benefit of special pay. Hence no relief can be granted to the petitioner.

5. At this stage, learned advocate, Mr.Majmudar requests that in view of the fact that the petitioner has not set out those details about the duties performed by

the petitioner, he should be allowed to take a chance before the authorities by making a detailed representation which the authorities be directed to consider in a time bound schedule.

6. Looking to the nature of the controversy involved in the petition, it is deemed fit that the petitioner be directed to approach the authorities by a detailed representation and try to justify his claim for special pay before the authorities. The authorities shall consider the representation of the petitioner within three months from the date of receipt of the same, if it is submitted to the authorities within four weeks from the date of receipt of a copy of this judgement.

7. The petition is accordingly disposed of. Rule is discharged with no order as to costs.

(Ravi R. Tripathi, J.)

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